JACK CHIA-MPH LTD.

v.

MALAYAN CREDIT LTD.

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
T KULASEKARAM J
LAI KEW CHAI J
[CIVIL APPEAL NO. 93 OF 1982]
19 APRIL 1984

LAND LAW: *Lease - Granted to appellant and respondent - No indication of separate interests - Joint tenancy - Severance of - Rental paid by both in proportion to area occupied - Appellant acquired substantial interest in respondent - Director of appellant chosen director of respondent - Disposal of holdings and resignation of director - Notice to quit - Application for order of equal partition or for sale with equal division of net proceeds of sale.*

The Malayan Credit Limited (respondent company) as tenants, were in sole occupation of the 7th floor of a building known as Malayan Credit House, originally owned by Malayan Credit Properties Pte. Ltd., a wholly owned subsidiary of the respondent company. When the respondent company became tenant of the 7th floor, they expended about $250,000 for "renovation". In August 1979 Jack Chia-MPH Limited (appellant Company) acquired a substantial interest in the respondent company and as a result, Mr. Jack Chia, Chairman of the former also became the chairman of the latter. On 31 August 1979, Malayan Credit Properties agreed to sell Malayan Credit House to United Overseas Land Ltd., and the sale to take place on 30 November 1979. Pursuant to a decision of the respondent company's Board, the appellant company moved into the 7th floor in October 1979 and spent about $64,000 for the costs of office partitioning, renovation and installation of air-conditioning equipment in the Chairman's room and the Board room. Mr. Jack Chia, in his capacity as executive Chairman of both companies occupied the Chairman's room and the Board room was used separately by both companies as and when needed by each of them.

On 30 November 1979 United Overseas Land Ltd., granted a lease of the 7th floor to the appellant and respondent companies, for a period of five years. The parties agreed to pay the monthly rent of $10,656 in proportion to the areas occupied by each and equally for the common area. Following the disposal by the appellant company of its substantial holdings in the respondent company, Mr. Jack Chia and three other directors resigned from the Board. On 23 April 1981 the respondent company gave notice to the appellant company to vacate the Chairman's room and the Board room not later than 31 May 1981. On 1 June 1981 the respondent company locked the Board room and gave final notice to vacate the Chairman's room. However, an agreement was reached to maintain the *status quo* pending the outcome of the present proceedings.

The appellant company sought an order for equal partition or for sale with equal division of the net proceeds of sale. In the Court below the application was dismissed, therefore this appeal.

Held:

[1] Each party has an equal right to all parts of the 7th floor and neither may lawfully exclude the other from any part thereof. The occupation is undivided and neither co-tenant can claim separate part save by obtaining partition.

[2] The leasehold premises be sold with liberty to both parties to bid in such sale and that the net proceeds be divided equally.

[Appeal allowed.]

Case referred to:
Williams v. Hensman [1861] 1 John & H 546

Other source referred to:
Halsbury's Laws of England, 3rd Edn. para. 517

For the appellant - Elias with Tan Joo Seng ; M/s. Allen & Gledhill
For the respondent - Karthigesu

JUDGMENT

Wee Chong Jin CJ, T Kulasekaram J, Lai Kew Chai J:

On 30 November 1979 United Overseas Land Ltd. granted a lease of the 7th floor of a building known as Malayan Credit House to Jack Chia-MPH Ltd. and Malayan Credit Ltd. The lease was for a term of five years at the monthly rent of $7,696 and the monthly service charge of $2,960 with an option to the lessees for two further terms of two years and three respectively. No words were added in the grant to indicate that the lessees were to take separate interests. The law is well settled that by this lease Jack Chia-MPH Ltd. ("the appellant company") and Malayan Credit Limited ("the respondent company") became joint tenants and that each had an identical interest in the whole land and every part of it. The interest of each was the same in extent, nature and duration and this being a leasehold interest, the possession was vested in both, none holding any part to the exclusion of the other and the interest of each vested at the same time. They had unity of title, interest, possession and time (see 32 *Halsbury's Laws of England,* 3rd Edn. para. 517).

Under Singapore law a joint tenancy can be severed at law so as to create a tenancy in common. This was the position in England before the Law of Property Act 1925 (15 Geo. 5 e. 20) In *Williams v. Hensman* [1861] (1 John & H 546) Sir W. Page Wood V.C., at p. 557 said:

> A joint-tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi.* Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund - losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested.

On the facts which were not in dispute in this case, only the last of the three ways enunciated by V.C. Page-Wood was relevant.

The undisputed facts were as follows. Malayan Credit House was originally owned by Malayan Credit Properties Pte. Ltd. a wholly owned subsidiary of the respondent company who were in sole occupation of the 7th Floor as tenant of its subsidiary. When the respondent company became tenant they expended about $250,000 for "renovation".

In August 1979 the appellant company acquired a substantial interest in the respondent company and nominated four directors to sit on the Board of Directors including Mr. Jack Chia, the appellant company's Chairman. On 11 August 1979 the Board of Directors of the respondent company approved an arrangement for the appellant company to share the office premises of 7th Floor, Malayan Credit House and to charge the appellant company for the area utilised by them. The Chairman's and the Board Room were excluded. Subsequently, Mr. Jack Chia was elected Executive Chairman of the respondent company but at his own request without any remuneration for his services as Executive Chairman.

On 31 August 1979, Malayan Credit Properties (Pte) Ltd. agreed to sell Malayan Credit House to United Overseas Land Ltd., completion to take place on 30 November 1979.

Pursuant to the 11 August 1979 decision of the respondent Company's Board, the appellant company moved into the 7th floor in October 1979. It spent $64,000 for the costs of office partitioning, renovation and installation of air-conditioning equipment in the Chairman's room and the Board room. It also paid the respondent company for furniture purchased from the respondent company. Mr. Jack Chia in his capacity as Executive Chairman of both companies occupied the Chairman's room and the Board room was used separately by both companies as and when needed by each of them.

In October 1979 the parties agreed to pay the monthly rent of $10,656 in proportion to the areas occupied by each and equally for the common area. The respondent company occupied an area of 3,273 sq ft. and the appellant occupied an area of 2,306 sq ft. The parties also agreed to pay the stamp fees for the lease and the survey fees for the plans required for the lease in proportion corresponding to the agreed apportionment of the rent. After the lease was entered into the parties requested the lessor to render separate bills to each co-lessee in the same proportions and thereafter each party paid its agreed share of the rent directly to the lessor.

At a Board meeting of the respondent company on 17 April 1980 following the disposal by the appellant company of its substantial holdings in the respondent company, Mr. Jack Chia and the three other directors nominated by the appellant company resigned from the Board of the respondent company with effect after the meeting. At that meeting Mr. Jack Chia proposed a reallocation of the proportionate rent but no decision was taken. At the next Board meeting the Board of the respondent company decided not to accede to Mr. Jack Chia's proposal.

On 23 April 1981 the respondent company gave notice to the appellant company to vacate the Chairman room and the Board room not later than 31 May 1981. On 1 June 1981 the respondent company locked the doors of the Board room thereby denying the appellant company access to it and on the same day gave "final notice" to vacate the Chairman's room. Following correspondence between the parties' solicitors an agreement was reached to maintain the *status quo* pending the outcome of the present proceedings.

We were of the opinion, on the undisputed facts, that legal joint tenancy had been severed so as to create a tenancy in common. But tenancy in common resembles joint tenancy in matters depending on unity of possession. The occupation is undivided and neither co-tenant can claim a separate part save by obtaining partition (see *24 Halsbury's Laws of England*, 1st Ed. para. 396).

In the present proceedings, the appellant company sought an order for equal partition or for sale with equal division of the net proceeds of sale. In the Court below the application was dismissed but on appeal we ordered that the leasehold premises be sold with liberty to both

parties to bid in such sale and that the net proceeds be divided equally. We were of the opinion that having regard to the differences between the parties and the fact that each has an equal right to all parts of the 7th Floor and neither may lawfully exclude the other from any part thereof, the *status quo* could not be maintained indefinitely and that it was necessary and expedient for the Court to order a sale in the exercise of its power under paragraph 3 of the First Schedule to the Supreme Court of Judicature Act (Cap.15) which reads:

> ***Additional Powers of the High Court***
> 3. Power to direct a sale instead of partition in any action for partition of land, and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

For these reasons, we allowed the appeal.

Also found at [1984] 1 CLJ 401